REMARKS

Claims 1, 4 and 5 are all the claims pending in the application.

Claims 1, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Che et al. (U.S. Patent No. 5,604,587) in view of Reick et al. (U.S. Patent No. 3,641,332).

The Applicants traverse the rejections and request reconsideration.

Rejection of claims 1, 4 and 5 under 35 U.S.C. 103(a) based on Che et al and Reick et al.

According to the present invention, the protection tube is made of metal or resin so that the light incident from outside is prevented from transmitting on the inner tube. If such stray light enters the cell, it reaches the detector and is detected as noise.

Che suggests that the jacket 42 may be made of metal to mechanically protect the inner tube. However, there is no disclosure relating to preventing the stray light.

Further, Che discloses, "the clad 38 may be applied by dipping, spray or other means" (col. 4). On the other hand, providing the air layer according to the present invention does not require complicated manufacturing processes. The air layer can be simply formed by inserting the inner tube into the outer protection tube.

Moreover, it is stated that the clad 38 is preferably applied immediately after the capillary is drawn to protect the capillary. Thus, close contact between the clad 38 and the capillary is required. Therefore, it is clear that an air layer can not be formed outside the capillary 12. Replacing the clad 38 of Che with the air layer of Reick will make the device of Che inoperable for its intended purpose.

The Applicants respectfully submit that the combined teachings of Che and Reick do not suggest the present invention.

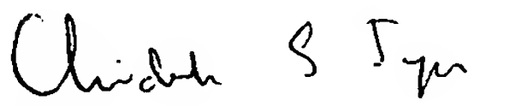
To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2142 *citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Further, the Applicants respectfully submit that a skilled artisan would not have been motivated to combine the teachings of Che and Reick. The Applicants respectfully submit that the patent office has not satisfied the burden of establishing *prima facie* obviousness at least because it has not satisfied at least the "all limitations" and "motivation" prongs of the three prong test for obviousness. Specifically, the patent office has not shown that the combined teachings of Che and Reick suggest the above discussed features.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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